

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RECEIVED

JAN 12 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	FCC 93-451
)	
Amendment of the Commission's)	GEN Docket No. 90-314
Rules to Establish New Personal)	
Communications Services)	RM-7140, RM-7175, RM-7618

To: The Commission.

REPLY TO COMMENTS ON
PETITION FOR RECONSIDERATION

U.S. Intelco Networks, Inc. ("USIN"), by its attorneys, on behalf of itself and its Independent Telephone Company ("ITC" or "Independent") owners and users, and pursuant to Section 1.429 of the Commission's Rules,¹ respectfully submits its Reply to the comments of various parties on its Petition for Reconsideration of the Second Report and Order² filed herein on December 8, 1993. USIN confines its Reply to the various comments on its proposals for modification of those elements in the Commission's regulatory design for the provision of Personal Communications Services ("PCS") which depart from the statutory obligation to ensure both that rural areas are served expeditiously and that rural telephone companies are provided meaningful opportunities to participate in the provision of PCS. In support thereof, USIN shows the following:

^{1/} 47 C.F.R. § 1.429.

^{2/} Second Report and Order, In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen. Docket No. 90-314, FCC 93-451 (rel. Oct. 22, 1993) ("Second R&O").

I. CHANNEL BLOCK C SHOULD BE RESERVED TO RURAL TELCOS

USIN notes with satisfaction that its proposal for the reservation of Channel Block C to rural telephone companies generated little opposition on the record. Moreover, in the larger context of participation in PCS by rural telephone companies, many parties echoed USIN's observation that rural telephone companies have earned the deserved reputation for having maintained the equilibrium between the urban and rural areas of this country in terms of similar availability of advanced telecommunications service offerings. In light of the Commission's mandate both to ensure PCS availability in rural areas and to promote the opportunity for rural telephone companies' participation in that service provision,³ and the acknowledged history of successful deployment of sophisticated telecommunications services by rural telephone companies, the Commission should implement the proposed reservation.

The vital public interest in maintaining and enhancing the existing urban/rural cohesiveness far outweighs any speculative disadvantages which may result from implementation of a Channel Block C reservation. To those who would argue that any such reservation

^{3/} Congress directs the Commission to promote
"the development and rapid deployment of new technologies. .
. for the benefit of the public, including those residing in
rural areas. . . [and] economic opportunity and competition
. . . by disseminating licenses among a wide variety of
applicants, including . . . rural telephone companies

Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, 107 Stat. 312 (Aug. 10, 1993), § 6002(a)(3), codified at 47 U.S.C. § 309(j).

of spectrum may interfere with the "market" for licenses by limiting the number of eligible bidders, USIN notes, at the outset, that this "market," itself a regulatory fiction, is only the platform from which competitive provision of service will result. It is competition among the resulting licensees, at least three and as many as seven, which will promote the public interest in ensuring market-responsive service delivery.

It must also be remembered that USIN's proposal affects only one of the seven allocated channel blocks. Even assuming the validity of the proposition that unlimited competition for licenses theoretically results in the allocation of spectrum to those entities which place the highest value on its utilization, reservation of the C Channel block to rural telephone companies would not disturb this overall goal and, moreover, would respond directly to the Congressional directives which define the public interest in terms of ensuring deployment of PCS in rural areas by rural telephone companies.

No commenter denies that USIN's alternative proposal, that the Channel Block C licensee be required, upon the request of a qualified rural telephone company, to partition and sell, at cost, the geographic territory coextensive with the rural telephone company's telephone service area, would promote the twin goals of ensuring that rural telephone companies have the opportunity to participate in PCS and advancing the goal of prompt deployment of PCS technology on a nationwide basis. The record reflects, instead, agreement with USIN's position that the benchmark service

requirements,⁴ which are not based upon geographic coverage, will result in concentration on serving more densely populated areas, to the disadvantage of rural populations.

Rather than address the public interest benefits which would result from adoption of either a Channel C Block reservation to rural telephone companies or the alternative mandatory partitioning, MCI Telecommunications Corporation ("MCI") mischaracterizes USIN's proposal for compulsory partitioning by broadening it: "A rural telephone company would be permitted to compel any broadband PCS licensee to 'carve out' from the MTA or BTA an area coextensive with the rural telco's franchise and resell that partition to the LEC at cost."⁵ Contrary to MCI's attempt to implicate otherwise, USIN clearly confined its proposal to the Channel C Block, which is confined to BTA areas.

MCI also avers that compulsory partitioning at the request of a qualified rural telephone company would confer some sort of "veto power" over deployment and equipment decisions.⁶ MCI does not bother to explain what this "veto power" actually constitutes or how it could conceivably arise, inasmuch as it is unclear how any independent licensee can affect or be affected by the decisions of another independent licensee. MCI's comments are, therefore,

^{4/} The Second R&O requires that service benchmarks be met to retain licenses -- one-third of the population within each market area must be served within five years of licensing; two-thirds within seven years, and ninety percent of the population must be served within ten years of being licensed. Second R&O at ¶ 134.

^{5/} MCI Opposition at pp. 3-4.

^{6/} Id. at p. 4.

without merit and should be ignored.

II. LIBERAL PARTITIONING POLICIES ARE REQUIRED

The record generally supports USIN's proposal to formalize liberal partitioning policies as a method of meeting the Congressional mandate to ensure prompt delivery of service to rural areas which otherwise would await build-out requirements or perhaps never receive service.⁷ Opponents to partitioning do not (and cannot) disagree with the obvious public interest benefits which would result from adoption of a voluntary partitioning policy, but rather engage in unfounded speculation as to its effect on licensees and the licensing process, rather than the public.

For example, Nextel Communications, Inc. ("Nextel") misfocuses attention away from the interests of the public and onto the interests of potential licensees by speculating that partitioning could "inject additional variables into the initial auction process and complicate the development of an orderly aftermarket."⁸ Assuming, arguendo, that it is appropriate for the Commission to consider the business interests of certain licensees as equal to the public interest in ensuring nationwide deployment of new

^{7/} See, e.g., Comments of Telocator at p.6; Comments of GTE Service Corporation at pp. 9-10; Opposition to Petitions for Reconsideration of Citizens Utilities Company at pp. 10-11; Comments of McCaw Cellular Communications, Inc. at p. 23. See also Petition for Reconsideration of the Rural Cellular Association at pp. 7-8; Petition for Reconsideration of the Alliance of Rural Area Telephone and Cellular Service Providers at p. 2; Petition for Reconsideration of Columbia Cellular Corporation at p. 2.

^{8/} Nextel's Opposition to Petitions for Reconsideration at p. 13.

services, USIN observes that adoption of a voluntary partitioning policy will provide even more concrete and uniformly available information to participants in the auction process than would otherwise result from each participant's speculation about the shape and dynamics of the eventual "aftermarket." In suggesting that some general relaxation of buildout requirements would respond to the issue of providing service to rural areas,⁹ Nextel again misfocuses on the needs of licensees, rather than the public.

MCI also opposes voluntary partitioning, positing that "excessive" partitioning will increase the complexity and cost of coordinating frequency use and avoiding interference.¹⁰ Assuming, arguendo, that the number of entities engaged in frequency coordination increase -- and this is the only conceivable area in which some additional complexity may arise -- this speculative cost increase to licensees must still be weighed against the public interest in prompt deployment of service.

MCI further postulates that voluntary partitioning is susceptible to manipulation and may enable the evasion of buildout rules.¹¹ Again, MCI is engaging in pure speculation, and ignoring completely the fact that full compliance with extant build-out rules can result in denial of service to rural areas. Furthermore, abuse of the Commission's processes and willful evasion of obligations may be dealt with under existing Commission rules and

⁹/ Id. at p. 14.

¹⁰/ MCI Opposition at p. 4.

¹¹/ Id.

procedures. Inasmuch as remedies to MCI's "horrible hypothetical" already exist, it would be an abuse of the public trust to fashion rules which serve this purpose and result in denial of service to rural communities across the country.

Finally, General Communication, Inc. ("GCI") avers that partitioning is not in the public interest because it would result in multiplicity of very small, possibly incompatible systems.¹² While USIN agrees that partitioning may result in a greater number of independent systems than would otherwise develop, there is no indication whatsoever that these systems would be "incompatible." In fact, the Commission may take notice of the fact that the history of cellular partitioning belies that result, and cellular carriers have demonstrated their ability, given the existence of market demand, to ensure seamless service delivery.¹³

Most importantly, GCI ignores, as do the other opponents to partitioning, the special circumstances of more rural areas and, in the process, condemns them to an eventual "trickle-down" of services designed for meet the needs of metropolitan areas, assuming service ever reaches these outlying areas. Additionally, opponents' comments reflect a pervasive, and perhaps purposeful, reluctance to recognize the ability and commitment of rural

¹²/ Comments and Opposition of General Communication, Inc. at p. 15.

¹³/ It is ironic that, with respect to the issue of partitioning, GCI ignores the public interest inherent in rapid, nationwide deployment of service, the very issue which GCI adamantly supports and utilizes as the justification for its opposition to any modification of build-out requirements. Id. at 13-14.

telephone companies to meet these challenges and ensure that the communications requirements of rural areas are met. There being no evidence on the record that partitioning will disserve the public, the Commission should formalize liberal partitioning policies to ensure the provision of PCS to rural areas.

III. CELLULAR INTERESTS SHOULD NOT PRECLUDE RURAL TELEPHONE COMPANIES FROM PARTICIPATING IN THE PROVISION OF PCS

As GTE notes,¹⁴ the record overwhelmingly supports modification or elimination of the cellular eligibility standards for rural telephone companies. The Commission's established market approach ensures that PCS will be offered on a competitive basis and allegations of the potential for anticompetitive behavior are completely unsupported.¹⁵

The current ownership standards are wholly arbitrary, particularly as applied to rural telephone companies whose cellular interests cannot conceivably be characterized as "undue market power"¹⁶ The Comments of McCaw Cellular Communications, Inc. amply demonstrate how ludicrous is the notion of spectrum warehousing by cellular carriers who face immense auction costs and onerous build-out requirements, particularly when these carriers will face the competition of as many as six other licensees on the PCS

¹⁴/ Comments of GTE at p. 2.

¹⁵/ Id.

¹⁶/ See USIN's Petition for Reconsideration at n. 12.

frequencies alone.¹⁷

With respect to rural telephone companies, both MCI and GCI again ignore both the fundamental nature of rural areas and the crucial issue of service deployment when focusing on the purported "pro-competitive" benefits of rendering cellular carriers ineligible in rural areas.¹⁸ Rural telephone companies, regardless of the nature or amount of their cellular interests, are not in a position to impede competition, and provide the best, if not only, hope to ensure that rural areas enjoy the benefits of PCS. The licensing design adopted by the Commission guarantees a competitive framework; consequently, any additional, arbitrary entry barriers erected to protect competitiveness are superfluous and should be discarded, particularly when such restrictions will jeopardize the Commission's ability to fulfill its Congressional mandate. Accordingly, USIN reiterates its position, as supported by the record in this proceeding, that the eligibility of qualified rural telephone companies to participate in the provision of PCS should not be subject to any cellular ownership restrictions.

V. CONCLUSION

The Commission's mandate to serve the public interest by ensuring that the needs of rural areas are met, as complimented by Congressional recognition of the ability of rural telephone

¹⁷/ Comments of McCaw Cellular Communications at p. 3.

¹⁸/ MCI Opposition at p. 15; Comments and Opposition of GCI at pp. 7-8.

companies to serve those needs, requires that elements of the Second R&O be modified. The record in this proceeding supports USIN's position that its proposed modifications will result in a rational and fair deployment of PCS technology which will benefit all Americans. USIN respectfully submits, therefore, that the public interest, particularly the interests of rural America, will benefit from adoption of its proposed modifications.

Respectfully submitted,
U.S. INTELCO NETWORKS, INC.

By: Stephen G. Kraskin (csc)
Stephen G. Kraskin
Sylvia Lesse

Its Attorneys

Kraskin & Associates
2120 L Street, N.W.
Suite 810
Washington, D.C. 20037
(202) 296-8890

Dated: January 12, 1994

Certificate of Service

I, Nicola A. Chenosky, of Kraskin & Associates, 2120 L Street, NW, Suite 810, Washington, DC 20037, hereby certify that copies of the foregoing Reply to Comments on Petition for Reconsideration were served on the 12th day of January, by first class, U.S. mail, postage prepaid, to the following:


Nicola A. Chenosky

* Via Hand Delivery

Chairman Reed Hundt *
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, DC 20554

Commissioner James H. Quello *
Federal Communications Commission
1919 M Street, NW, Room 802
Washington, DC 20554

Commissioner Andrew C. Barrett *
Federal Communications Commission
1919 M Street, NW, Room 826
Washington, DC 20554

Commissioner Ervin S. Duggan *
Federal Communications Commission
1919 M Street, NW, Room 832
Washington, DC 20554

Thomas P. Stanley, Chief Engineer *
Office of Engineering and Technology
Federal Communications Commission
2025 M Street, NW, Room 7002
Washington, DC 20554

Bruce A. Franca, Deputy Chief *
Office of Engineering and Technology
Federal Communications Commission
2025 M Street, NW, Room 7002
Washington, DC 20554

David R. Siddall, Esq., Chief - Frequency Allocation Branch *
Office of Engineering and Technology
Federal Communications Commission
2025 M Street, NW, Room 7102
Washington, DC 20554

Robert Pepper, Chief *
Office of Plans and Policy
Federal Communications Commission
1919 M Street, NW, Room 822
Washington, DC 20554

Ralph Haller, Chief *
Private Radio Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, DC 20554

Kathleen Levitz, Acting Chief *
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 500
Washington, DC 20554

International Transcription Service *
Federal Communications Commission
1919 M Street, NW, Room 246
Washington, DC 20554

Michael D. Kennedy, Director - Regulatory Relations
Stuart E. Overby, Manager - Regulatory Programs
Mary E. Brooner, Manager - Regulatory Policies
Motorola, Inc.
Government Relations Office
1350 I Street, NW, Suite 400
Washington, DC 20005

Catherine Wang
Margaret M. Charles
Swidler & Berlin, Chartered
3000 K Street, NW, Suite 300
Washington, DC 20007
Counsel for SpectraLink Corporation

William E. Stanton, Executive Director
National Emergency Number Association
P.O. Box 1190
Coshocton, OH 43812-6190

James R. Hobson
Donelan, Cleary, Wood & Maser, PC
1275 K Street, NW, Suite 850
Washington, DC 20005-4078
Counsel for National Emergency Number Association

Michael F. Altschul, V.P. - General Counsel
Cellular Telecommunications Industry Association
Two Lafayette Centre, 3rd Floor
1133 21st Street, NW
Washington, DC 20036

Philip L. Verveer, Daniel R. Hunter
Jennifer A. Donaldson and Francis M. Buono
Willkie, Farr & Gallagher
Three Lafayette Centre, Suite 600
1155 21st Street, NW
Washington, DC 20036-3384
Counsel for Cellular Telecommunications Industry Association

James P. Tuthill
Theresa L. Cabral
Betsy Stover Granger
140 New Montgomery Street, Room 1525
San Francisco, CA 94105
Counsel for Pacific Bell and Nevada Bell

James L. Wurtz
1275 Pennsylvania Avenue, NW
Washington, DC 20004
Counsel for Pacific Bell and Nevada Bell

Jack Taylor, Esq.
InterDigital Communications Corporation
9215 Rancho Drive
Elk Grove, CA 95624

Kathy L. Shobert, Director - Federal Regulatory Affairs
General Communication, Inc.
888 16th Street, NW, Suite 600
Washington, DC 20006

Edward R. Wholl
Jacqueline E. Holmes Nethersole
120 Bloomingdale Road
White Plains, NY 10605
Counsel for NYNEX Corporation

Scott K. Morris, Vice President - Law
McCaw Cellular Communications, Inc.
5400 Carillon Point
Kirkland, Washington 98033

R. Gerard Salemme, Sr. V.P. - Federal Affairs
Cathleen A. Massey, Sr. Regulatory Counsel
McCaw Cellular Communications, Inc.
1150 Connecticut Avenue, NW, 4th Floor
Washington, DC 20036

R. Michael Senkowski
Robert J. Butler
Suzanne Yelen
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006
Counsel for UTAM, Inc.

Veronica M. Ahern
Albert Shuldiner
Nixon, Hargrave, Devans & Doyle
One Thomas Circle, NW
Suite 800
Washington, DC 20005
Counsel for QUALCOMM

Stephen L. Goodman
Halprin, Temple & Goodman
1301 K Street, NW
Suite 1020, East Tower
Washington, DC 20005
Counsel for Northern Telecom Inc.

John G. Lamb, Jr.
Northern Telecom Inc.
2100 Lakeside Boulevard
Richardson, TX 75081-1599

Peter Kozdon
Manager, System Architecture
ROLM, a Siemens Company
4900 Old Ironside Drive
Santa Clara, CA 95052-8075

Ellen S. Deutsch
Jacqueline R. Kinney
Citizens Utilities Company
P.O. Box 340
8920 Emerald Park Drive, Suite C
Elk Grove, CA 95759-0340

Larry A. Blosser
Donald J. Elardo
MCI Telecommunications Corp.
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Thomas A. Stroup
Mark J. Golden
Telocator, The Personal
Communications Industry Association
1019 19th Street, NW
Washington, DC 20036

Carl W. Northrop
Bryan Cave
700 13th Street, NW, Suite 700
Washington, DC 20005
Counsel for George E. Murray

George Y. Wheeler
Peter M. Connolly
Koteen & Naftalin
1150 Connecticut Avenue, NW, Suite 1000
Washington, DC 20036
Counsel for Telephone and Data Systems, Inc.

Robert S. Foosner
Lawrence E. Krevor
Nextel Communications, Inc.
601 13th Street, NW, Suite 1100 South
Washington, DC 20005

Gail L. Polivy
GTE Service Corporation
1850 M Street, NW, Suite 1200
Washington, DC 20036

Jay C. Keithley
Leon M. Kestenbaum
Sprint Corporation
1850 M Street, NW, Suite 1100
Washington, DC 20036

Kevin C. Gallagher
Centel Cellular Company
8725 Higgins Road
Chicago, IL 60631

W. Richard Morris
P.O. Box 11315
Kansas City, MO 64112

David C. Jatlow
Young & Jatlow
2300 N Street, NW, Suite 600
Washington, DC 20037
Counsel for The Ericsson Corporation

Robert J. Miller
Gardere & Wynne, L.L.P.
1601 Elm Street, Suite 3000
Dallas, Texas 75201
Counsel for Alcatel Network Systems, Inc.

Jonathan D. Blake
Kurt A. Wimmer
Covington & Burling
1201 Pennsylvania Avenue, NW
P.O. Box 7566
Washington, DC 20044
Counsel for American Personal Communications

J. Barclay Jones
Vice President, Engineering
American Personal Communications
1025 Connecticut Avenue, NW
Washington, DC 20035

Martin T. McCue
Linda Kent
United States Telephone Association
1401 H Street, NW, Suite 600
Washington, DC 20005-2136

John S. Logan
Jonathan M. Levy
Dow, Lohnes & Albertson
1255 23rd Street, NW, Suite 500
Washington, DC 20037
Counsel for Cellular Information Systems, Inc.

Gary M. Epstein
Nicholas W. Allard
James H. Barker
Latham & Watkins
1001 Pennsylvania Ave., NW, Suite 1300
Washington, DC 20004-2505
Counsel for Bell Atlantic Personal Communications, Inc.

William J. Franklin
William J. Franklin, Chartered
1919 Pennsylvania Avenue, NW, Suite 300
Washington, DC 20006-3404
Counsel for Association of Independent Designated Entities

Timothy E. Welch
Hill & Welch
1330 New Hampshire Avenue, NW, Suite 113
Washington, DC 20036

James F. Lovette
Apple Computer Inc.
1 Infinite Loop, MS 301-4
Cupertino, CA 95014

Timothy E. Welch
Hill & Welch
1330 New Hampshire Avenue, NW, Suite 113
Washington, DC 20036
Counsel for MEBTEL, Inc.

David Cosson
L. Marie Guillory
NTCA
2626 Pennsylvania Avenue, NW
Washington, DC 20036

Lisa M. Zaina
OPASTCO
21 Dupont Circle, NW, Suite 700
Washington, DC 20036

David L. Nace
Lukas, McGowan, Nace & Gutierrez
1819 H Street, NW, 7th Floor
Washington, DC 20006
**Counsel for Alliance of Rural Area Telephone
and Cellular Service Providers**

Harold K. McCombs, Jr.
Duncan, Weinberg, Miller & Pembroke, P.C.
1615 M Street, NW, Suite 800
Washington, DC 20036

James U. Troup
Laura Montgomery
Arter & Hadden
1801 K Street, NW, Suite 400K
Washington, DC 20006
Counsel for Iowa Network Services, Inc.

Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, NW, Suite 300
Washington, DC 20037

Barry R. Rubens, Manager - Regulatory Affairs
Concord Telephone Company
68 Cabarrus Avenue, East
P.O. Box 227
Concord, NC 28026-0227

R. Phillip Baker, Exec. Vice President
Chickasaw Telephone Company
Box 460
Sulphur, OK 73086

David L. Nace
Marci E. Greenstein
Lukas, McGowan, Nace & Gutierrez
1819 H Street, NW, 7th Floor
Washington, DC 20006
Counsel for Pacific Telecom Cellular, Inc.

James D. Ellis
Southwestern Bell Corporation
175 E. Houston, R. 1218
San Antonio, TX 78205

David A. LaFuria
Lukas, McGowan, Nace and Gutierrez
1819 H Street, NW, 7th Floor
Washington, DC 20006
Counsel for Columbia Cellular Corporation

David L. Jones
Rural Cellular Association
2120 L Street, NW, Suite 810
Washington, DC 20037